SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 394

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,

Appellant,

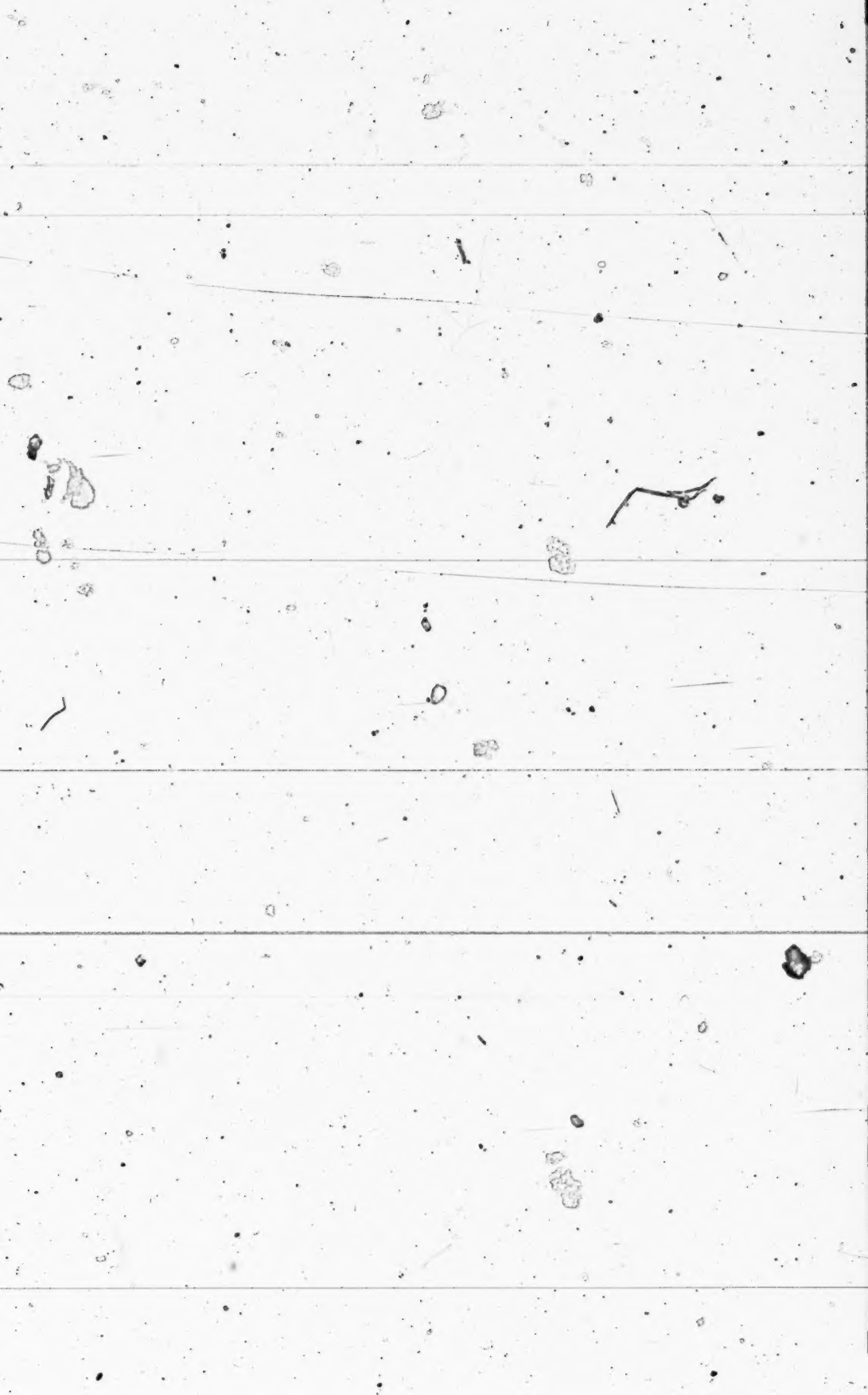
vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. ALBIN S. PEARSON, JUDGE OF SAID PROBATE COURT OF RAMSEY COUNTY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT AS TO JURISDICTION.

JOSEPH F. COWERN,
Counsel for Appellant.



INDEX.

Subject Index.

Table of Cases Cited.

STATUTES CITED.

IN SUPREME COURT, STATE OF MINNESOTA

No. 32163

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,

Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. ALBIN S. PEARSON, JUDGE OF SAID PROBATE COURT OF RAMSEY COUNTY,

Respondents.

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellant, Charles Edwin Pearson, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

(a) Statutory Provision Sustaining Jurisdiction.

In the State court appellant attacked a State statute as repugnant to the Constitution of the United States. The

Supreme Court of Minnesota, having rendered its decision in favor of the validity of said statute, appellant, under Section 237 of the Judicial Code, as amended (U. S. C. A., Title 28, Section 344), is given a direct right of appeal to the Supreme Court of the United States.

(b) Reference to Statute Attacked.

The Minnesota statute involved is Chapter 369 of the Laws of 1939. It is published in the official edition, Session Laws of 1939, on pages 712, 713. Pursuant to Rule 12 of the Supreme Court of the United States appellant sets out said Chapter 369 verbatim as an appendix to this jurisdictional statement. Its provisions will be discussed later in this statement.

(c) Date of Judgment.

Final judgment was entered in the Supreme Court of Minnesota on August 31st, 1939. The application for appeal was presented September 6th, 1939.

(d) Nature of Case and Rulings of the Minnesota Supreme Court.

On May 5th, 1939, appellant filed in the Supreme Court of the State of Minnesota his petition seeking a writ of prohibition, directed to the Probate Court of Ramsey County and the Hon. Albin S. Pearson, judge thereof, requiring that they desist and refrain from further proceeding in a prosecution directed against appellant and based on Chapter 369 Laws of 1939. A warrant for appellant's arrest under said statute had been issued and appellant was about to be arrested and imprisoned. His trial in the Probate Court had been set for May 5th, 1939. The charge upon which the warrant for appellant's arrest was issued was that the "petitioner believes" that appellant is a "psychopathic personality."

In his petition and in the briefs and oral argument appellant contended that Chapter 369 was invalid as repugnant to the Constitution of Minnesota and the Constitution of the United States. The details of appellant's contentions will appear later.

The Supreme Court of Minnesota sustained the validity of the statute and this appeal followed.

This being an original proceeding in the Supreme Court of Minnesota, there is no record or settled case to which appellant can give page or other specific reference as required by Rule 12 of the Supreme Court of the United States. Those references we are willing to supply after the record is made up, if they are then deemed important. The constitutional objections urged by appellant are all set out in his petition.

Complying further with said Rule 12 appellant states that the Federal questions sought to be reviewed were raised by his petition initiating the proceeding filed in the Supreme Court of Minnesota. They were first raised in the Supreme Court because it has original jurisdiction in prohibition proceedings. (Art. 6, Sec. 2, Const. of Minn. and Sec. 132, Mason's 1927 Statutes.)

The grounds upon which appellant contends that the questions involved are substantial are that they involve personal liberty and rights guaranteed by the Constitution.

As the petition and assignment of errors disclose, appellant claimed in the Supreme Court of Minnesota, and now claims, that this Chapter 369 violates all of the constitutional guarantees contained in Section 1 of the Fourteenth Amendment in that:

(a) It is too vague, indefinite and uncertain to constitute valid legislation.

(b) It is void as class legislation because only applicable to a part of the class dealt with.

(c) There are no provisions in the act itself safeguarding and protecting human rights and securing to appellant and all others the rights and liberties guaranteed to them by the Fourteenth Amendment to the Constitution.

(d) The act is so arbitrary, unusual and cruel in its provisions and so lacking as to any provisions for the protection of human rights and liberties as to offend the good sense of mankind and all the principles of right and justice.

(e) In its essence the act is criminal legislation and void because denying the right to a jury trial.

Some light will be thrown on these questions if we compare Chapter 369 with a recent act of the Illinois Legislature. The Illinois act is House Bill No. 36, approved July 6, 1938, and it may be found on pages 28-30 of the Laws of Illinois, 60th General Assembly, First and Second Special Sessions 1938. So far as we know the validity of this Illinois act has not yet been passed upon and as to that we express no opinion.

The Minnesota Act	The Illinois Act
No classification	Classified under the heading: "Criminal Code," with a subheading: "Commitment and Detention of Sexual Criminals."
The title is: "An act relating to persons having a psychopathic personality." (This gives no information whatever as to what class will be dealt with in the body of the act. When this act was introduced not one man in a million could have stated what the body of the act would deal with. Whoever ventured an opinion would have been guessing.)	The title is: "An act to provide for the commitment and detention of criminal sexual psychopathic persons." (This gives considerable information.)

The Minnesota Act	The Illinois Act
Embraces only such persons whose disorder could be traced to a few harmless qualities, common to most men, enumerated in section 1. All others are exempt.	Embraces *all* persons suffering with the disorder dealt with.
No limit.	The disorder must have existed one year.
No such provision.	Persons must first have been charged with crime.
No such provision. All the court need do is to appoint two "licensed doctors."	The court is required to appoint two qualified psychiatrists to make examination.
No requirement. Anyone holding a license is qualified. That he has had no experience and, in fact, has no qualifications to pass on such matters is no bar. The men appointed may never have heard of a psychopathic personality.	To qualify as a competent psychiatrist, a doctor must be: "A reputable physician licensed to practice in Illinois and who has exclusively limited his professional practice to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years."
No provision for jury trial. Under Mason's 1927 Minnesota Statutes, Sec. 8959 (made a part of the act by reference) if the two doctors (who are not required to know anything about psychopathic personalities) determine that the accused is "dangerous," the court "shall" commit him for life to an insane asylum for the dangerously insane.	A jury "shall be impaneled" to ascertain the ultimate fact in issue.
No provision in the act for hospitalization. Commitment is to an insane asylum for the "dangerous insane." Sec. 8959 Mason's Statutes, 1927.	Commitment is to a hospital staffed to adequately treat the disorder.
Commitment is for life. Sec. 8959, Mason's Statutes, 1927.	Commitment is "until recovery."
Authorizes private hearings.	The act contemplates a public hearing before a jury.

The above is sufficient to demonstrate that, both by what it omits as well as by what it includes, this Chapter 369 is a legal monstrosity.

Section 2 of Chapter 369 provides that "*all* laws now in force or hereafter enacted relating to insane persons" shall apply "with like force and effect" to persons "having a psychopathic personality", and, also, "to persons *alleged* to have such personality". There is no limitation to procedural matters. Under Section 8959, Mason's 1927 Minnesota Statutes, made a part of Chapter 369 by reference, the Probate Judge and two doctors constitute the board of examiners. It is not required that any of them know anything about psychopathic personalities. If they determine that the accused is "dangerous to the public" then he "*shall* be committed" to an asylum "for the dangerous insane" for the rest of his life, unless a new board should later find him no longer dangerous. It is not required that this new board should know anything about psychopathic personalities. There is no difference between "dangerous to other persons" and "dangerous to the public"—so far as the accused is concerned "the public" are "other persons". Under the provisions of this act a perfectly sane man:

(a) Can be committed for life.

(b) To a lunatic asylum for the "dangerous insane."

(c) As a result of a private hearing.

(d) Without benefit of counsel.

(e) In a county remote from his residence.

(f) Without benefit of a jury trial.

(g) Without the presence of witnesses on his behalf.

(The act, it is true, provides for the issuance of subpoenas, but it makes no provision for the service thereof, or for the payment of witness fees and mileage. Of course, if this is

a criminal proceeding (as we claim it is) then the accused would be entitled to "compulsory" process for obtaining witnesses without the payment of witness fees or mileage. Const. of Minn. Art. 1, section 6, section 7017 Mason's 1927 Minn. Statutes.)

(h) On examination by two doctors who have no knowledge whatever of psychopathic personalities and may never have heard the term used. It is not even required that they be in active practice.

(i) Without hospitalization or specialized care.

In addition, the blanket reference making all laws relating to the insane applicable to psychopathic personalities can take away from a sane man, the franchise, the right to marry, the right to contract or convey property, and it renders him incompetent as a witness and subjects him to all other disabilities of the insane. His home may be broken up and his business destroyed.

Why go further? The above should demonstrate that this Chapter 369 violates all of the constitutional guarantees contained in Section 1 of the Fourteenth Amendment to the Constitution of the United States, and fully justifies the report of the Committee on Psychiatric Jurisprudence (a joint committee representing the American Bar Association, the American Medical Association, the American Psychiatric Association and the American Neurological Association) who reported to the American Bar Association at its 1938 meeting that:

> "It was thought premature to urge such a law until there is a more substantial agreement on the part of medical men and psychiatrists as to the definition of the term 'Psychopathic Personality.'"

The above quotation may be found in the October 1938 issue of the American Journal of Medical Jurisprudence.

The act is too vague and indefinite to constitute valid legislation. There will be as many different interpretations of numerous provisions thereof as there are county attorneys and probate judges. The writer has before him an analysis of the act and the opinion sustaining it prepared by a skilled attorney in the office of the county attorney of one of the large counties of the State. He thinks that emotional instability, for instance, must exist by reason of "inherited tendencies" and not because of environmental conditions and that it must be manifested by an arrested development of certain faculties, and that the other elements mentioned, or a combination thereof, must be manifested with respect of sexual matters "by reason of similar conditions". He says: "If these factors are not shown to exist, then a hearing under the law, in my opinion, is not warranted." He finds no inkling in the act as to the burden of proof, but feels that the court should require "a degree of proof beyond a reasonable doubt". And he gives as his reason therefor "because man's liberty is at stake" and adds:

> "This should be true despite the fact that Section 3 of the act provides that the determination shall not constitute a defense to a charge of crime."

He guesses that the provision making all laws relating to insane persons applicable to psychopathic personalities has reference only to "commitment after adjudication". He thinks that an "overt act" is unnecessary for an adjudication, and in many other respects he has to wander in a fog of doubt and uncertainty before expressing an opinion.

No one can tell what the legislature meant by the word "dangerous" in Section 1 of the act. Do they refer to physical injury or to a weakening of the morals or mind of others? No one can tell. What is meant by "irre-

sponsible", "emotional instability", "impulsiveness of behavior", etc. No one can tell.

It is very evident that we are to have as many different rules and guesses as to most of the provisions of this act as there are county attorneys, licensed doctors and probate judges in the State, and all this in a proceeding where, after adjudication, the court is given no discretion as to commitment as, under Section 8959, Mason's 1927 Statutes, the court "shall" commit the person involved to a lunatic asylum for the dangerously insane for the rest of his life.

Attention has been called to the fact that the Illinois act applies to "all persons" within the class dealt with. The "class" dealt with in Chapter 369 are persons "irresponsible" for their conduct "with respect to sexual matters", but all members of such class are not included. Section 1 of the act exempts all members of such class whose condition is not traceable to one or more of certain designated traits common to all of us—and in some cases commendable traits. The act exempts more members of the class than it covers.

If there is any need for an act of this nature, clearly it should embrace all of the class and unless it does so it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States. An act dealing with redheaded psychopathics would be void as class legislation. There is no essential difference between such an act and Chapter 369.

As required by Rule 12, we append to this statement a copy of the opinion of the Supreme Court of Minnesota.

(e) Cases Sustaining the Jurisdiction.

Proceedings for writ of prohibition have been held to be "suits" and the judgments disposing thereof "final judg-

ments" within the statute permitting a review by the Supreme Court of the United States.

Weston v. *City Council of Charleston*, 27 U. S. (2 Pet.) 449.

Bandini etc. Co. v. *Superior Court of State of California*, 284 U. S. 8, 52 S. C. R. 103.

And it has been held that denial of prohibition without opinion by the highest court of the State is a final decision.

Michigan Central Co. v. *Mix*, 278 U. S. 492, 49 S. C. R. 207.

The following additional authorities clearly indicate that the questions involved are substantial, and that appellant is not attempting to present a frivolous question when he claims that the act involved is repugnant to the Fourteenth Amendment to the Constitution of the United States.

Lanzetta et al. v. *State*, 59 S. C. R. 618.

United States v. *Cohen Co.*, 255 U. S. 81, 41 S. C. R. 298.

Connolly, Com. v. *General Const. Co.*, 269 U. S. 385, 46 S. C. R. 126.

United States v. *Armstrong*, 265 Fed. 683.

United States v. *Capital Co.*, 34 App. D. C. 592.

Herndon v. *Lowry*, 301 U. S. 242, 57 S. C. R. 732.

Yick Wo. v. *Hopkins*, 118 U. S. 356, 6 S. C. R. 1064.

Bank v. *Okely*, 4 Wheaton 235.

International Harvester Co. v. *Kentucky*, 234 U. S. 216, 34 S. C. R. 853.

Collins v. *Kentucky*, 234 U. S. 634, 34 S. C. R. 924.

And see the cases collected in Cooley's Constitutional Limitations (8th ed.), pages 733, 739, 740, 806 to 825.

Respectfully submitted,

JOSEPH F. COWERN,
Attorney for Appellant, St. Paul, Minnesota.

EXHIBIT "A".

Chapter 369—H. F. No. 1584.

An act relating to persons having a psychopathic personality.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Definitions.—The term "psychopathic personality" as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons.

Sec. 2. Laws Relating to Insane Persons, etc., to Apply to Psychopathic Personalities.—Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively. Provided however, before such proceedings are instituted, the facts shall first be submitted to the county attorney, who, if he is satisfied that good cause exists therefor, shall prepare the petition to be executed by a person having knowledge of the facts, and shall file the same with the judge of the probate court of the county in which the "patient", as defined in such statutes, has his settlement or is present. The judge of probate shall set the matter down for hearing and for examination of the "patient". The judge may at his discretion exclude the general public from attendance at such hearing. The "patient" may be represented by counsel; and if the court determines that he is financially unable to obtain counsel, the court may appoint counsel for him. The "patient" shall be entitled to have subpoenas issued out of said court to compel the attendance of witnesses in his behalf. The court shall appoint two duly licensed doctors of medicine to assist in the examination

of the "patient". The proceedings had shall be reduced to writing and shall become part of the records of said court. From a finding made by such court of the existence of psychopathic personality, the "patient" may appeal to the district court upon compliance with the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 8992-166, 8992-167, 8992-169, 8992-170.

Sec. 3. Not to Constitute Defense.—The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure.

Sec. 4. Inconsistent Acts Repealed.—All acts and parts of acts inconsistent herewith are hereby repealed.

Approved April 21, 1939.

(Session Laws of Minnesota for 1939.)

"EXHIBIT "B".

COPY

No. 153. Ramsey County Gallagher, C. J.

32163.

STATE OF MINNESOTA ex rel. CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, and HON. A. S. PEARSON, Judge, Respondents.

Syllabus.

1. Chapter 369, L. 1939, which subjects persons who are irresponsible for their conduct in sexual matters and thereby dangerous to others to the jurisdiction of the probate court is not violative of constitutional limitations on the jurisdiction of that court.

2. An act entitled "A Bill for an Act Relating to Persons Having a Psychopathic Personality" and providing for the care and commitment of sexually irresponsible persons dangerous to others does not violate Art. 4, Sec. 27, of the state constitution which provides: "No law shall embrace more than one subject, which shall be expressed in its title."

HELD, (a) The Provisions of c. 369, L. 1939, are not so indefinite and uncertain as to render the statute void.

(b) While due process of law requires notice and opportunity to be heard, the constitutional right to a jury trial does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others.

Writ quashed.

* * * * * * *

OPINION

GALLAGHER, Chief Justice.

On April 27, 1939, James A. Cook, a police officer of the city of St. Paul, filed in the probate court of Ramsey county a petition verified on information and belief, charging one Charles Edwin Pearson with being a psychopathic personality as defined by c. 369, Session Laws of Minnesota, 1939, and praying for his commitment according to law. On certification by the county attorney of his satisfaction that good cause existed for the institution of the proceedings, the probate court issued an order requiring the sheriff of Ramsey county to forthwith bring the said Pearson before the court and another order fixing a hearing on the petition for May 5, 1939, at two o'clock P. M.

Before the service of these Orders, relator applied to this court for a writ of prohibition and on his verified petition attacking the constitutionality of the act under which the proceedings were instituted we issued a temporary writ prohibiting the probate court from proceeding with the hearing until the further order of this court. The matter is now here on relator's application to make the writ permanent.

Because of a recognized need for legislation to deal with sex offenders and a belief, shared in by medical authorities and others, that sex crimes are committed because of a weakness of the will as well as of the intellect, the 1939 legislature enacted c. 369 entitled: "A Bill for an Act Relating to Persons Having a Psychopathic Personality." Section 1 of the act reads:

> "The term 'psychopathic personality' as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

Section 2, in part, reads:

> "Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively."

The act also provides that the facts be submitted to the county attorney and his approval be procured before a petition be filed with the probate court; that the probate judge may at his discretion exclude the public from the hearing; that the patient may be represented by counsel and if the court determines that the patient is financially unable to obtain counsel, it is empowered but is not required to appoint counsel for him; and that the patient shall be entitled to have subpoenas issued to compel the attendance of witnesses. From a finding that a "patient" is a "psychopathic personality" he may appeal to the district court upon compliance with the provisions of 3 Mason Minn. St. 1938 Supp. secs. 8[illegible]2-166, 167, 169 and 170.

Section 3 of the act reads:

> "The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure."

Relator challenges the constitutionality of c. 369, L. 1939, on three grounds. He contends: (1) That it violates Article 6, sec. 7, of the constitution of Minnesota defining and limiting the jurisdiction of probate courts; (2) that it violates Article 4, sec. 27, of the constitution of Minnesota, which reads: "No law shall embrace more than one subject, which shall be expressed in its title" and (3) that it is void because it is uncertain and indefinite and violates the Fourteenth Amendment to the Constitution of the United States and other constitutional provisions.

1. We deal first with the question of the power of the legislature under our constitution to confer upon the probate court jurisdiction over persons having what is termed a "psychopathic personality."

Article 6, sec. 1 of the Minnesota constitution reads: "The judicial power of the State shall be vested in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the Supreme Court, as the legislature may from time to time establish by a two-thirds vote."

Section 7 of the same Article, in part, reads: "A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this Constitution."

It will be noted that the constitution specifically limits the jurisdiction of the probate court to "estates of deceased persons and to persons under guardianship." If persons having "psychopathic personalities" are to be included among those over whom the probate court has jurisdiction, it must be because they are persons subject to guardianship.

The constitution does not specifically state what class of persons are subject to guardianship but leaves the regulation of that question to the legislature. It was so decided in State *v.* Wilcox, 24 Minn. 143, where the court said: "The manner in which jurisdiction conferred by the constitution on any court or officer shall be exercised when not prescribed by the constitution itself, or the power to regulate it vested elsewhere, may be regulated by the legislature." It was there held that the putting under guardianship of all persons who are proper subjects for it—insane persons, incorrigible drunkards, idiots, spendthrifts, as well as minors—comes within the jurisdiction of the probate court.

While this court in State *v.* Wilcox, *supra*, referred only to insane persons, incorrigible drunkards, idiots, spendthrifts and minors as included in the class subject to guardianship within the jurisdiction of the probate court we do not think it was intended for all time to limit the classification to those named or to deprive the probate court of jurisdiction over other types of "unnaturals" such as the class involved herein.

Leavitt *v.* City of Morris, 105 Minn. 170, 117 N. W. 393, held constitutional c. 288, L. 1907, creating and establishing a hospital farm for inebriates, and authorizing the State board of control to purchase lands therefor and to provide means for the building and maintenance of such institution. This case recognized the jurisdiction of the probate court over persons defined by the act as "inebriates" and approved the procedure prescribed for hearing and commitment.

The constitutionality of c. 397, L. 1917, known as "The Juvenile Court Act" was determined in Peterson *v.* McAuliffe, 151 Minn. 467, 187 N. W. 226. That act placed jurisdiction over juvenile offenders in the district court in counties having more than 33,000 inhabitants and in the probate court in counties having not more than 33,000 inhabitants.

Chapter 369, L. 1939, sec. 1, defines the term "psychopathic personality" to mean "the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts,

or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons." The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, defines "psychopathic" as "pertaining to mental disease." It naturally follows that a "psychopathic personality" is one characterized by a mental disorder. It is well recognized that there are many types and degrees of mental disorders. An article appearing in volume 2, March-April, 1939, Number 3 Edition of "The American Journal of Medical Jurisprudence" on "Mental Abnormality in Relation to Crime" refers to "psychopathic personalities" as:

> "These are individuals who show a lifelong and constitutional tendency not to conform to the customs of the group. They habitually misbehave. They have no sense of responsibility to their fellow-men or to society as a whole. Due to their inherent inability to follow any one occupation, they succumb readily to the temptation of getting easy money through a life of crime. There is usually a history of delinquency in early life. These individuals fail to learn by experience. They are inadequate, incompatible, and inefficient. This class is sometimes designated as 'Constitutional Psychopathic Inferiority.' Before making this diagnosis, every other diagnostic possibility must be considered and excluded. In this group we see pathological lying, prostitution, vagrancy, illegitimacy, alcoholism and drug addiction. The term 'moral deficiency' is sometimes used to characterize this group. These patients may have psychotic episodes superimposed upon the trends just mentioned. Many of these individuals come into contact with the courts on account of threats, assaults, quarrels and vagrancy."

It is to be noted that the definition given above includes not only the sexually irresponsible but also others of immoral tendencies. The fact that the legislature has chosen to limit the class to the former does not make the act more or less objectionable from a jurisdictional standpoint. Whether the limitation constitutes a basis for objection on the

ground that the title fails to express the subject of the act will be later considered.

While the abnormalities of the group placed under the jurisdiction of the probate court by this act differ in form from those which characterize inebriates, idiots and insane persons, the need for observation and supervision is the same and the considerations which led this court in State *v.* Wilcox, *supra*, to recognize the latter as being proper subjects for guardianship apply with equal force to the former. In the interest of humanity and for the protection of the public, persons so afflicted should be given treatment and confined for that purpose rather than for the purpose of punishment. This we believe to be true even though their mental deficiencies might not be such as to require absolving them from the effects of the criminal statutes. We find no difficulty in holding that the legislature may give to the probate court jurisdiction over such personalities.

2. It is urged by relator that c. 369, L. 1939, is void because in violation of Article 4, sec. 27, of the constitution of Minnesota, which reads: "No law shall embrace more than one subject, which shall be expressed in its title." Cases of two kinds arise under this and similar constitutional provisions: (1) Those in which it is claimed that the title is so general in its terms that it does not fairly express the subject of the act, and (2) those in which it is claimed that the subject as expressed in the title excludes, by implication, certain provisions of the act. The instant case is of the first type.

The objects of the constitutional provision have been often expressed in the decisions of this court. They are, first, to prevent "log-rolling legislation", and "omnibus bills", by which a large number of different and disconnected subjects are united in bill and then carried through by a combination of interests; and secondly, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the proposed legislation, or of the interests affected. 6 Dunnell, Minn. Dig. (2 ed.) sec. 8906 and cases cited.

While the provision of the constitution is mandatory, it is to be given a liberal and not a strict construction. John-

son *v.* Harrison, 47 Minn. 575, 50 N. W. 923. The rules to be applied to its construction and the tests to determine whether the law is repugnant to it are expressed by Mr. Justice Mitchell in Johnson *v.* Harrison, *supra*, in language so clear that it warrants adoption. "The term 'subject', as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. * * * All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject. The large number of related or cognate matters often treated of under some comprehensive title, such as 'Criminal Code', 'Penal Code', 'Code of Civil Procedure', 'Private Corporations', 'Railroad Corporations', and the like, are familiar illustrations of what may be legitimately included in one act. * * * The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification. The generality of the title of an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The title was never intended to be an index of the law."

These rules and tests have been applied in a great many later cases. Crookston *v.* Polk County, 79 Minn. 283, 82 N. W. 586; Lien *v.* Norman County, 80 Minn. 58, 82 N. W. 1094; State *v.* Gunn, 92 Minn. 436, 100 N. W. 97; Atwell *v.* Parker, 93 Minn. 462, 101 N. W. 946; Johnson *v.* Schmahl, 119 Minn. 179, 137 N. W. 741; State *v.* Sharp, 121 Minn. 381,

141 N. W. 526; Gard *v.* Otter Tail County, 124 Minn. 136, 144 N. W. 748; State *v.* Droppo, 126 Minn. 68, 147 N. W. 829; State *v.* Dakota County, 142 Minn. 223, 171 N. W. 801; Naeseth *v.* Hibbing, 185 Minn. 526, 242 N. W. 6; Blaisdell *v.* Home Building & Loan Assn., 189 Minn. 422, 249 N. W. 334.

A title broader than the statute, if it is fairly indicative of what is included in it, does not offend the constitution. State *v.* Standard Oil Co., 111 Minn. 85, 126 N. W. 527; Seamer *v.* G. N. Ry. Co., 142 Minn. 376, 172 N. W. 765. Whether or not a title is expressive of the subject matter of an act must be determined with reference to practical considerations, the purpose of the constitutional provision, the approach adopted by this court to the problem in the past, and the disposition of other cases involving titles of similar brevity.

Applying these principles to the statute before us it can be said: (1) If the term "psychopathic personality" gives sufficient notice that the act relates to sexually irresponsible persons, the class embraced by the terms of the statute is adequately named in the title, and (2) if the act affects such persons in a manner and by a mode reasonably to be associated with laws of this type, the fact that the title fails to mention such provisions does not render it too general from a constitutional viewpoint.

It is true that the term "psychopathic" is not a part of the working vocabulary of most people. Yet the reasonably well-informed recognize it as having reference to mental disorders. (See The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, *supra*). To those concerned with mental cases, it connotes a condition of the mind causing the person afflicted to be hopelessly immoral. In either case, the fact that the law deals with the sexually irresponsible would not come as a surprise to legislators or members of the public who might have occasion to read its title.

Since the title indicates that the act deals with persons of abnormal minds, the manner in and the mode by which the law is to operate are clearly germane to the subject expressed. That the statute is essentially the same in these respects as are the laws of this state which apply to insane,

idiots and inebriates appears sufficiently to indicate this fact.

Examination of titles held not to be violative of the constitutional provision fortifies the conclusion which we have reached. In Johnson *v.* Harrison, *supra,* the title in question was "An Act to Establish a Probate Code." The body of the entitled act includes provisions which cast the descent and determine in whom property left by an intestate shall vest and which allow this title to be asserted by the heir in courts other than probate wholly independent of any action of or administration in the latter, as well as provisions fixing the jurisdiction of and procedure in the probate court.

In State *v.* McDow, 183 Minn. 115, 235 N. W. 627, it was held that "An ordinance relating to disorderly houses, and houses of ill-fame and common prostitutes" is not repugnant to the charter provision which requires that the title to an ordinance shall not contain more than one subject. And in Kerst *v.* Nelson, 171 Minn. 191, 213 N. W. 904, an act entitled "An act in relation to the organization of the state government" was considered to be sufficiently specific. See also Leavitt *v.* City of Morris, 105 Minn. 170, 117 N. W. 393; State *v.* Helmer, 169 Minn. 221, 211 N. W. 3, State *v.* People's Ice Company, 124 Minn. 307, 144 N. W. 962; Kerst *v.* Nelson, 171 Minn. 191, 213 N. W. 904; State *v.* Women's and Children's Hospital Association, 150 Minn. 247, 184 N. W. 1002.

Turning to recent decisions from other states having similar constitutional provisions we find that the following titles have been considered not too general in a constitutional sense; "An act relating to marriage and divorce" (Titus *v.* Titus, 96 Colo. 191, 41 P. 2nd 244); "An act relating to corporations" (759 Riverside Ave. Inc. et al. *v.* Marvin, 109 Fla. 473, 147 So. 848); "An act relating to disputes concerning terms and conditions of employment," (Fenske Bros. *v.* Upholsterers Union, 358 Ill. 239, 193 N. E. 112, 97 A. L. R. 1312); "An act concerning husband and wife, and declaring an emergency", Clark *v.* Clark, 202 Ind. 104, 172 N. E. 124; "An act relating to cities of the first class" (City of Wichita *v.* Sedgwick County, 119 Kan. 471, 204 Pac. 693); "An act relating to crimes and punish-

ments" (Allen *v.* Commonwealth, 272 Ky. 533, 114 S. W. 2nd 757; "An act concerning the welfare of children" (98 N. J. L. 690, 121 Atl. 437; affirmed in 99 N. J. L. 516, 123 Atl. 730); "An act relating to warehouse receipts" (Commonwealth *v.* Rink, 267 Pa. 408, 110 Atl. 153).

We conclude, therefore, that the constitutional mandate is not violated by the title here in question. Its defects may offend the principles of legislative draftsmanship but not those of constitutional law.

3. Is the act so indefinite and uncertain as to make it void? Conceding that it is imperfectly drawn, the statute is nevertheless valid if it contains a competent and official expression of the legislative will. State *v.* Partlow, 91 N. C. 550, 49 Am. 652. Judicial interpretation cannot operate until the law making department of the state has spoken intelligibly. On the other hand, out of deference to legislative authority, we must give effect to all its enactments, according to its intention, so far as we have constitutional right and power. Attorney General *v.* Eau Claire, 37 Wis. 400, 438. To this end, we must, when confronted with a statute which is susceptible of different interpretations, accept that one which is in conformity with the purpose of the act and in harmony with the provisions of the constitution. See State *v.* Standard, 61 Neb. 28, 84 N. W. 413, 87 Am. St. 449; Grenada County Supervisors *v.* Brogden, 112 U. S. 261, 5 Sup. Ct. 125, 28 L. ed. 704.

Statutes must be so construed as to give effect to every section and part, and when any doubts arise as to the constitutionality thereof such doubts must be resolved in favor of the law. Hurst *v.* Town of Martinsburg, 80 Minn. 40, 82 N. W. 1099; Hunter *v.* City of Tracy, 104 Minn. 378, 116 N. W. 378. Again, it has been said: "It is the bounden duty of courts to endeavor by every rule of construction to ascertain the meaning of, and to give full force and effect to, every enactment of the general assembly not obnoxious to constitutional prohibitions. But if, after exhausting every rule of construction, no sensible meaning can be given to the statute, or if it is so incomplete that it cannot be carried into effect, it must be pronounced inoperative and void." Sutherland, St. Const. pp. 140, 141. See also 6 Dunnell,

Minn. Dig. (2 ed.) sec. 8995, and cases cited. Aigler, Legislation in Vague or General Terms, 21 Mich L. Rev. 831; 44 Harv. L. Rev. 1139; 45 Harv. L. Rev. 160.

Applying these principles to the case before us, it can reasonably be said that the language of Section 1 of the act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be an unwarranted departure from the accepted meaning of the words defined. See Draper, Mental Abnormality, Am. Jour. of Med. Jur., Vol. 2, No. 3, p. 163.

Section 2 of the act incorporates by reference all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane and to persons found to be insane. Such practice has been held proper. Hasset *v.* Welch, 303 U. S. 303, 314, 58 Sup. Ct. 559, 82 L. Ed. 858; Hagler *v.* Small, 307 Ill. 460; Land Co. *v.* Brown, 73 Wis. 294, 40 N. W. 482, 3 L. R. A. 472. It has not been made to appear that those charged with administration of the insane laws have experienced any insuperable difficulties in understanding the provisions thereof. Since this act, in effect, merely extends the concept of insanity to include sexually irresponsible persons who are dangerous to others, we see no reason why such reference should be considered meaningless.

Section 3 of the act provides that the existence in any person of a condition of psychopathic personality shall not constitute a defense to a charge of crime. On its surface, this section would appear to imply that persons with psychopathic personalities are sane. The confusion which is thus caused is obviated when we consider the limited scope of the term "insanity" when used to indicate a defense

to crime. For in this state, an uncontrollable and insane impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act, is not allowed to relieve a person of criminal liability. State *v.* Scott, 41 Minn. 365, 43 N. W. 62; State *v.* Simenson, 195 Minn. 258, 262, N. W. 638. See 17 Minn. L. Rev. 630. The act before us, in providing for the care and commitment of persons having uncontrollable and insane impulses to commit sexual offenses, treats them as insane. While the public welfare requires that they be treated before they have opportunity to injure others, it does not necessarily follow that their malady must excuse them from criminal conduct occurring in the past.

The final argument of the relator is that the act denies a "patient" a jury trial and fails to secure certain other rights of defendants in criminal proceedings. Since the proceedings here in question are not of a criminal character we will confine ourselves to consideration of relator's right to a jury trial. While persons cannot be adjudged insane and committed without notice and an opportunity to be heard (State *v.* Billings, 55 Minn. 467, 57 N. W. 206, 794; State *v.* Kilbourne, 68 Minn. 320, 71 N. W. 396. See 43 Am. St. Rep. 531) the majority of the courts hold, and we think properly, that the constitutional right to a jury trial does not apply to proceedings of this type. Re O'Connor, 29 Cal. App. 225, 155 Pac. 115; Gaston *v.* Babcock, 6 Wis. 503; County of Black Hawk *v.* Springer, 58 Iowa 417. Contra In re McLaughlin, 87 N. J. Eq. 138, 102 Atl. 439; Com. ex rel. Stewart *v.* Kirkbridge 2 Brewst. (Pa.) 419; Shumway *v.* Shumway, 2 Vt. 339.

If relator has a right to a jury trial, it is because such was provided at common law when our constitution was adopted. While no one has contended that "psychopathic personalities" were confined and treated at common law, the claim has been made that the issue of idiocy was, in early times, decided by a jury. The other view is that if such ever was the case, the practice had been abandoned before our constitution was adopted. That we are committed to the latter belief appears quite unequivocally from the language of this court in Vinstad *v.* State Board of Control, 169 Minn. 264, 211 N. W. 12. Referring to proceedings

in district court upon an appeal from an order of the probate court denying the petition of one adjudged feeble-minded for restoration to capacity, the court there said that the constitutional right of trial by jury does not apply to proceedings for placing persons under guardianship. The question of guardianship was held not triable by jury as a matter of right, either in probate or district courts. It was added, however, that the district court could, in its discretion, send an issue of fact to the jury for a special verdict.

We conclude that the act is constitutional both in form and in application.

The restraining order is vacated and the writ quashed.

Mr. Justice Hilton, being incapacitated by illness, took no part.